

AIRPORT SPECIAL PROVISIONS

THESE AIRPORT SPECIAL PROVISIONS (“ASP”) are attached to and made a part of that certain Master Agreement for the Honolulu Rail Transit Project (the “Master Agreement”), dated October 11, 2013, by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the “STATE,” and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the “CITY”. The STATE and the CITY collectively, are the “Parties,” and individually a “Party,” all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, the CITY, by the Honolulu Authority for Rapid Transportation (“HART”), a semi-autonomous agency of the CITY, is constructing a mass transit system known as the Honolulu Rail Transit Project (H RTP) which includes the Airport Guideway Section, as described in Article I and Exhibit “A” of the Master Agreement;

WHEREAS, the CITY has identified certain lands and facilities owned by the STATE Airports Division (“STATE”) as depicted in the most current Airport Layout Plan, Exhibit “B” of the Master Agreement (hereinafter “AIRPORT LANDS”) at Honolulu International Airport (hereinafter “AIRPORT”) needed for the Airport Guideway Section of the H RTP (the “PROJECT”), which AIRPORT LANDS are under the jurisdiction, authority, and control of the STATE;

WHEREAS, the Parties recognize that the alignment of the PROJECT over AIRPORT LANDS will impact and constrain the STATE’s current and future ability to use certain AIRPORT LANDS for airport and aviation-related purposes;

WHEREAS, the STATE understands that the PROJECT scope of work affecting AIRPORT LANDS consists of utility relocations, foundations, columns, guideways, an airport transit station and connectors, Traction Power Sub-Station, and any other facilities necessary for the complete operation and maintenance of the PROJECT;

WHEREAS, the CITY agrees to construct, operate and maintain the PROJECT in such a way as to minimize the impact of the PROJECT on the STATE’s current and future operations;

WHEREAS, the Parties to this ASP agree that when the terms contained in the Master Agreement do not adequately address the specific use and occupancy of AIRPORT LANDS impacted by the PROJECT and in the event of any conflict between the terms of the Master Agreement and this ASP, the terms of this ASP shall prevail;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the PROJECT on and over AIRPORT LANDS subject to the conditions herein; and

WHEREAS, the STATE does not object to granting the CITY's joint use and occupancy rights over the certain AIRPORT LANDS, provided the CITY complies with the terms and conditions set forth herein;

NOW, THEREFORE, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, the Parties hereby mutually agree as follows:

1. Airport Premises. The STATE is the owner of and has jurisdiction, authority, control and possession of those AIRPORT LANDS depicted in Exhibit "E", page 3, of the Master Agreement. **Exhibit ASP-1**, attached to this ASP, shows the PROJECT situated over AIRPORT LANDS in relation to existing STATE facilities and planned near-term projects at the Airport (hereinafter referred to as the "Airport Premises").

2. Grant of Use and Occupancy Rights. The STATE grants the CITY the joint right to enter, use and occupy, on a non-exclusive basis, including surface, subsurface, and airspace property, such portion of the Airport Premises as shall be necessary to allow the construction, operation, and maintenance of the PROJECT for the life of the Project or for sixty-five (65) years plus an additional period of time to be negotiated between the Parties, or sooner termination, whichever occurs first.

- a. In connection with the grant of entry, use and occupancy to the CITY, the CITY shall obtain from the STATE, a non-exclusive easement for the construction, operation and maintenance of the PROJECT. The easement document shall contain the standard terms and conditions of the STATE's most current grant of easement form, as may be amended from time to time and subject to any other terms and conditions as may be prescribed by the Board of Land and Natural Resources and the STATE to best serve the interest of the STATE. The CITY shall provide survey maps and descriptions of the non-exclusive easement area in accordance with STATE Department of Accounting and General Services Office of Land Survey standards. The CITY shall process and obtain all subdivision approvals for the non-exclusive easement.
- b. The location and extent of the Airport Premises which may be utilized for the PROJECT, and the scope and nature of such use, shall be governed by the as-built drawings of the PROJECT, and as approved by the STATE.
- c. There is hereby reserved to the STATE, its successors and assignees, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the PROJECT, together with the right to cause in

said airspace such noise as may be inherent in the operation of aircraft, now or hereafter used for navigation of, or flight in the air, using said airspace, or landing at, taking off from or operating at the Airport;

- d. The CITY agrees that the PROJECT shall comply with all current Transportation Security Administration (hereinafter "TSA") and Federal Aviation Administration (hereinafter "FAA") rules and regulations, and any subsequent additions and/or amendments enacted during the term of the Master Agreement. The CITY agrees that the CITY shall not be grandfathered under the TSA and FAA rules and regulations that are in effect at the time of planning, design and construction of the PROJECT, and shall be responsible for all costs of bringing the PROJECT into compliance with any subsequent additions and/or amendments to the TSA and FAA rules and regulations during the life of the Master Agreement.

3. Right to Construct, Operate and Maintain the PROJECT. The STATE grants to the CITY and its Contractors the right to construct, operate and maintain the PROJECT on, within, under, over, and across the Airport Premises subject to the following:

- a. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT on the Airport Premises, including, but not limited to, all design, planning, engineering, land acquisition, construction, alteration, and maintenance costs and expenses.
- b. The STATE shall approve, in writing, all design bid packages for the construction of the various components of the PROJECT, which written approval shall not be unreasonably withheld. The CITY agrees and shall comply with the STATE's request that the CITY include within the CITY's bid packages, that certain portions of the PROJECT must be phased in such a manner as to avoid damaging, destroying, and/or demolishing any of the STATE's newly constructed facilities and improvements.
- c. The CITY realizes that the PROJECT's proposed column locations are in close proximity to Airport roadways and facilities, accessible to the public, and within the Air Operations Area as defined by the STATE (hereinafter "AOA") and associated Ground Support Equipment and vehicles. The CITY shall obtain the STATE's comment on the location of the proposed column locations so that the PROJECT does not further restrict or limit existing and future access and use of AIRPORT LANDS. If the CITY is not able to adequately address such comments, then the CITY shall help mitigate the loss of access and use of AIRPORTS LANDS. In addition, the CITY's Project design shall include all necessary measures to prevent damage and vandalism to the columns, and agrees that the STATE shall not be held liable for any and all damage or vandalism to the columns.

- d. The CITY realizes that the PROJECT requires certain existing utilities to be relocated or new utilities installed specifically for the PROJECT. The CITY shall provide the following:
- i. For utilities within AIRPORT LANDS providing service outside of the Airport (i.e. Army Signal Corps Line, Fuel Lines, etc.), a Land Court Designation of Easement together with a Land Court Grant of Easement. Depending on the extent of the relocation of a utility facility, either an amended easement document or cancellation and issuance of a new easement document will be prepared by the CITY. The CITY shall process and obtain all subdivision approvals and recordation for the designation or abandonment of easements.
 - ii. For utilities within AIRPORT LANDS providing service to the Airport, a Land Court Designations of Easement and Land Court Grants of Easement will not be required, but the CITY shall provide the STATE with the as-built drawings accurately reflecting the relocation of any utilities.
 - iii. For utilities within AIRPORT LANDS that will be brought in to exclusively provide service to the PROJECT, the CITY shall prepare new easements, metes and bounds (and/or Land Court) descriptions and maps for the STATE and State Board of Land and Natural Resources' approval using STATE generated grant of easement templates. The CITY shall process and obtain all subdivision approvals for the designation of easements.
 - iv. For utilities being relocated outside AIRPORT LANDS onto private property not under STATE jurisdiction, the CITY shall prepare a Land Court Designation of Easement together with a Land Court Grant of Easement regardless if the utilities are within AIRPORT LANDS providing service to the Airport. The CITY shall process and obtain all subdivision approvals and recordation for the designation of easements.
- e. The CITY and its Contractors agree to comply with all STATE construction policies, including but not limited to:
- i. STATE Construction Specifications;
 - ii. Section C (Construction Site Runoff Control Program) and Section D (Post-Construction Storm Water Management) of the STATE Storm Water Management Program Plan (SWMPP); and
 - iii. Any other policies required of STATE contractors.

- f. The CITY understands that the STATE will allow construction to start on AIRPORT LANDS recognizing that the CITY must comply with items b, c, d, and e above.
- g. The CITY understands that STATE operations shall have priority over the construction of the PROJECT, and the STATE has the authority to issue stop work directives at the STATE's discretion that compromises Airport security and/or impacts Airport daily operation.
- h. The CITY realizes that the PROJECT is in close proximity to Airport roadways and facilities, accessible to public areas, and within the current and future AOA. The CITY understands that the CITY and its Maintenance Contractors shall be required to obtain AOA badges and coordinate with the STATE to obtain approval prior to the commencement of any maintenance work to minimize impacts to Airport operations.

4. Consideration. In consideration of the CITY's right to use and occupy the Airport Premises, the CITY agrees as follows:

- a. That the PROJECT will be publicly owned by the CITY, and will provide regular service at the Airport to the general public using the PROJECT's transit station to be located on the Airport Premises and Pedestrian Connectors (as defined below);
- b. To pay the STATE one-dollar (\$1.00) per year, subject to approval from FAA, for the initial 65-year term for the use of AIRPORT LANDS for the PROJECT including but not limited to the Airport transit station and Pedestrian Connectors, consistent with the FAA Federal Register Policy and Procedures ("Airport Revenue Use Policy") concerning the Use of Airport Revenue.
- c. To be solely responsible for all costs and expenses incurred in connection with the direct PROJECT impacts during the construction of and for the operation and maintenance of the PROJECT on existing and future Airport Premises as set forth herein, including, but not limited to, all design, planning, engineering, land acquisition, construction, alteration, and maintenance costs and expenses, including:
 - i. those additional costs incurred by the STATE which are over and beyond the STATE's typical design and construction costs of relocating/replacing facilities to mitigate the relocation and/replacement of existing impacted STATE facilities, occupants, tenants and users and utilities due to the existence of the PROJECT, and

ii. those additional costs which are over and beyond the STATE's typical design and construction costs associated with future development of, and facilities on AIRPORT LANDS necessary for (1) the safe and efficient use of navigable airspace by aircraft with respect to the safety of persons and property on the ground and (2) efficient use of the AOA that could be impacted by the PROJECT in areas preserved and designated for future STATE tenants requiring direct access to the AOA, including but not limited to roadways, cargo/freight forwarding operators, flight kitchen facilities, and screening facilities such as those for animal and plant health inspection service purposes.

d. To allow unrestricted access (i.e. pedestrian, vehicles, aircraft, and aircraft ground support equipment) for future tenants requiring direct access to future AOA on those AIRPORT LANDS bisected by the PROJECT between Aolele Street and Ualena Street (**Exhibit ASP-2**).

e. The CITY will work with the STATE to grant exemptions from development standards and construction of improvements or structures under or near the PROJECT (including within the maintenance easement areas) that is on existing or future AIRPORT LANDS (i.e. exemption from building setback requirements to allow the STATE to construct future facilities on AIRPORT LANDS being impacted by the PROJECT which will maximize the operational efficiency). The STATE shall provide the CITY for review and approval of such plans (both temporary and permanent) to be constructed under or near the PROJECT, and the CITY shall not unreasonably withhold approval of such plans.

5. Airport Transit Station and Pedestrian Connectors to Airport Facilities.

a. The CITY agrees to plan, design, construct, and maintain the structural integrity, at its sole expense, the Airport Transit Station and the Pedestrian Connectors from the Airport Transit Station to the Airport's passenger terminals. The Pedestrian Connectors shall include the walkways or pathways and all associated improvements through the Airport parking garages, required to separate PROJECT users from vehicles parked and operating within the parking garages.

b. The STATE shall approve the design of the Airport Transit Station and Pedestrian Connectors to provide the shortest and most intuitive path to the Airport's passenger terminals. This approval shall not be unreasonably withheld by the STATE.

c. The STATE shall have the right to all advertising, vending, and other revenues of any kind generated by the CITY, within the Airport Transit Station and the Pedestrian Connectors, excluding fare box revenues.

- d. The CITY has an operations and maintenance contract with its core systems contractor, and pursuant thereto will provide janitorial and maintenance services within the Airport Transit Station and any connection to the station such as the Pedestrian Connectors on AIRPORT LANDS. The CITY shall work with the STATE, TSA, and FAA to include appropriate safety and security protocols in the CITY's Safety and Security Plans specific to the Airport Transit Station including but not limited to closure and securing of the Airport Transit Station access points and on-site personnel requirements. The CITY will amend its level of janitorial, security or maintenance services as needed if the State demonstrates adverse impact on the STATE's ability to ensure performance of similar services in area(s) near or connected to the station and guideway system.
- e. The CITY agrees that the theme and design for the Airport Transit Station and Pedestrian Connectors on AIRPORT LANDS and facilities will be consistent and compatible with the themes and designs of the STATE's existing and future facilities. To ensure appropriate coordination in this regard, the CITY will continue to include the STATE in the development of the station theme and design and allow the STATE the opportunity to provide timely comments as part of the design process.

6. Work Permits on AIRPORT LANDS. Prior to commencing any work on the PROJECT, the CITY shall request and the STATE will grant, within twenty-one (21) calendar days, or a mutually agreed upon time frame, of the date of CITY's written request, permits for any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work within the Airport Premises. In the case of an emergency, the STATE may grant a permit after the work remedying the emergency need has been performed. **Exhibit ASP-3** attached hereto describes the process for the application and grant of such permits by the STATE.

7. Work Completion. Upon completion of any work performed on, within, under, over, or across the Airport Premises by the CITY and its Contractors, the CITY and its Contractors shall remove all unused or surplus materials, if any, and shall restore the Airport Premises and any other affected areas, including landscaped areas, in as good or better condition as existed before the commencement of the construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work, all subject to the STATE's approval. In addition, the CITY shall warrant all such restoration work, for a period of not less than twenty-four (24) months from the date of final inspection and acceptance by the STATE. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT, a copy of which is attached to the Master Agreement as Exhibit "I" and incorporated in this ASP by reference. The CITY acknowledges that the CITY shall be responsible for any failure of the restoration work.

8. Ownership of Improvements. Upon satisfactory completion/restoration by the CITY of any impacted Airport facilities, including roadways, sidewalks, parking facilities, landscaped areas and any other related improvements located on AIRPORT LANDS pursuant to the PROJECT, the STATE agrees to accept such as STATE improvements.

9. Maintenance of CITY Improvements. The CITY shall, at its sole cost and expense, keep the PROJECT, including the Airport Transit Station and the Pedestrian Connectors (including the walkways or pathways and all associated improvements through the Airport parking garages required to separate PROJECT users from vehicles parked and operating within the parking garages) in a safe, clean, sanitary, and orderly condition, consistent with DOTA's Rules and Regulations, including, but not limited to, making all necessary repairs and replacements, and shall not make, permit, or suffer, any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the PROJECT located on AIRPORT LANDS.

10. Repair. The CITY shall not damage, undermine, or otherwise destroy any portion of the AIRPORT LANDS, including, without limitation, any STATE facilities or improvements situated on the Airport Premises or any equipment or appurtenances relating thereto, including, but not limited to, roadways, sidewalks, storm drains, drainage systems, and underground utility systems. The CITY shall, at the written direction of the STATE, promptly, at its sole cost and expense, repair, restore, and reconstruct that portion of said AIRPORT LANDS so damaged, undermined, or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. Repair work shall be designed and constructed in accordance with all applicable STATE and federal standards and requirements, including those of the FAA.

11. Airport and Airspace Restrictions. The CITY agrees that:

- a. It shall not erect nor permit the erection of any structure, objects of natural growth, or other obstruction on AIRPORT LANDS above a height that is determined by the application of the requirements of 14 CFR Part 77. The STATE reserves the right to remove any offending structure or object, and to cut any offending natural growth, all of which shall be at the expense of the CITY; and
- b. It shall not make use of AIRPORT LANDS in any manner which might interfere with the landing at, and taking off of aircraft from the Airport or which might otherwise constitute an Airport hazard. The STATE reserves the right to cause the removal or abatement of any such interference at the expense of the CITY.

12. STATE Work on AIRPORT LANDS Within or Affecting the PROJECT. If the STATE performs work of any kind on, within, under, over, across, near, or affecting the PROJECT, the STATE will coordinate such work with the CITY. The CITY shall not prevent the STATE from performing such work, provided, however, that the STATE will take the necessary protective measures to assure that such work does not unreasonably interfere with the PROJECT.

13. Indemnity.

- a. Notwithstanding any agreements to the contrary between the Parties, the CITY agrees to be fully liable for any damages and injuries to any person and personal property and shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, including aircraft, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this ASP, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE.
- b. The CITY agrees to be fully liable for any damages and injuries to any person and personal property and shall defend, indemnify and hold harmless the STATE from and against any damages to the CITY's guideway system from or relating to aircraft jet blast, and from damages or injuries to any person or personal property, including any aircraft, resulting from falling debris from the guideway system whether it be debris originating from the top of the guideway (e.g. objects) or from the side or underside of the guideway (e.g. spalling) upon AIRPORT LANDS, including but not limited to roadways, automobile parking areas, and any existing and/or future AOA, such as aircraft parking and cargo ramps, aircraft maintenance areas and any other areas intended for the maneuvering and operating of aircraft and ground support equipment.
- c. The CITY agrees to be fully liable for any damages or injuries to any people and personal property, including but not limited to damages to aircraft and consequential damages (e.g. delayed flights), that has clearly been proven to be the result of debris from the guideway system located on AIRPORT LANDS traversing existing and/or future AOA.
- d. Based on information provided to the CITY by the STATE and Hawaiian Airlines, the CITY's consultants have prepared a report evaluating the effects upon the guideway system of jet blast for the largest aircraft that Hawaiian Airlines utilizes or may utilize. The evaluation report is attached to and made a part of this ASP, as **Exhibit ASP-4**. Notwithstanding any of the findings of the report, the CITY agrees to be fully liable for any and all damages and injuries to any person and personal property and shall hold harmless, defend, and indemnify the STATE from and against any damages to any existing and future aircraft of any airplane design group, and operated by any airline carrier, that has

clearly been proven to be the result of debris from the guideway system located on AIRPORT LANDS traversing existing and future AOA.

14. RESERVED.

15. Insurance. The CITY shall procure or cause to be procured and maintained during the term of the ASP, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this ASP. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall instruct the issuer to provide the STATE directly a thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release or limit the amount or degree of the CITY's liability.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide herein.

16. Assignment. The CITY's rights under this ASP, in whole or in part, shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except to an agency of government that may assume the rights and obligations of the CITY with respect to the ASP provided that the CITY making such assignment shall continue to be obligated under the terms of the ASP; otherwise the CITY may not assign its interest without the prior written consent of the STATE. In giving any such consent, the STATE will not release the CITY from any liabilities or obligations hereunder.

17. Default.

- a. Notice of default. If the CITY defaults on or otherwise fails to perform the CITY's obligations under this ASP, the STATE will issue a written notice of default to the CITY by receipted hand-delivery or certified mail, return receipt requested.
- b. The CITY to Cure Defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE's reasonable satisfaction within one hundred eighty (180) calendar days of the date of the STATE's written notice to the CITY or such further time as may be authorized by the STATE in writing. The CITY's failure

to construct the PROJECT in accordance with the STATE's approved plans and specifications shall be deemed a default of this ASP.

- c. STATE Remedies for Failure to Cure. If the CITY fails to cure said defaults or fails to perform within the required time period, the STATE may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the CITY, which shall promptly pay said costs and expenses to the STATE upon receiving notice from the STATE. The STATE shall be entitled to all remedies available under this ASP and by law, which remedies shall be cumulative and not exclusive.

18. Abandonment. This ASP and all of the CITY's rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment of the PROJECT by the CITY on the Airport Premises, or any portion thereof, for a continuous period of five (5) years.

19. Termination. This ASP shall not be terminated or cancelled in whole or in part until the expiration of the life of the PROJECT or sixty-five (65) years plus an additional period of time to be negotiated between the Parties, whichever occurs first, except as provided in Paragraph 18 (Abandonment). Any termination, cancellation, or abandonment of this ASP, in whole or in part, shall not relieve the CITY of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to Paragraphs 13 (Indemnity) and 20 (Hazardous Materials) herein with respect to any obligations arising prior to such termination or cancellation of all or a portion of this ASP.

20. Hazardous Materials.

- a. "Hazardous Materials" definition. For the purposes of this ASP, "Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, State, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
- b. STATE pre-approval required. The CITY shall not, without the written prior approval of the STATE, the exercise of which approval is in the sole and absolute discretion of the STATE, cause or permit the escape, disposal, discharge, or release of any Hazardous Materials except as permitted by law. The CITY shall not allow the storage or use of such materials in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into AIRPORT LANDS any such

materials except to use in the ordinary course of the CITY's business, and then only after written request is made to the STATE identifying such materials and upon the STATE's written consent, which consent may not be unreasonably withheld. As used in this Paragraph 20, the "presence, escape, disposal, discharge, or release of Hazardous Materials" includes, but is not limited to, oil, fuel, and polychlorinated biphenyl (PCB) spillage or leakage, improper waste oil disposal, or pollution of any water attributable to the CITY's (a) operations and activities on or connected with the PROJECT on Airport Premises or (b) use and occupancy of the AIRPORT LANDS.

- c. The CITY's best knowledge and belief. If any lender or governmental agency shall ever require testing to ascertain whether or not the CITY has caused or permitted the escape, disposal, discharge, or release of Hazardous Materials, then the CITY shall be responsible for the reasonable costs thereof. Hazardous materials pre-existing on AIRPORT LANDS shall be administered in accordance with Article III of the Master Agreement. The CITY shall execute affidavits, representations and the like from time to time concerning the CITY's best knowledge and belief regarding the presence of hazardous materials on, within, or under the AIRPORT LANDS and/or the escape, disposal, discharge, or release of Hazardous Materials therefrom. The CITY acknowledges that Hazardous Materials do exist on certain portions of AIRPORT LANDS, and shall be responsible for all costs to properly remove, dispose and/or abate such materials that the CITY disturbs. The CITY shall not be permitted to dispose of any Hazardous Materials at the STATE's Soil Management Facility.
- d. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, indemnify and insure the STATE as an Additionally Named Insured where appropriate, including, but not limited to, under any CITY excess policies of insurance and when the CITY is named as an Additionally Named Insured under policies of insurance provided by its Contractors, from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, including aircraft, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to Hazardous Materials as a result of the PROJECT located on AIRPORT LANDS.

21. Protection of waters. The CITY shall maintain and employ debris, pollution, and contamination control measures, safeguards, and techniques to prevent debris, pollution, or contamination to ocean waters, streams, or waterways resulting from the activities or operations of the CITY, and the CITY's invitees and agents on, within, under, over, across, through, or connected with the Airport Premises, and shall take prompt corrective action upon actual notice

of the event of such pollution or contamination to promptly remove the cause of such pollution or contamination, and shall immediately clean the Airport Premises and affected areas and surrounding waters of such pollutant or contaminant and restore to the STATE's reasonable satisfaction the areas affected by such pollution or contamination, all at the CITY's cost and expense.

The STATE may also conduct its own inspections of the CITY's Contractors work on AIRPORT LANDS and/or on any property within the STATE's Small Municipal Separate Storm Sewer System (MS4) permit. The STATE shall notify the CITY, in writing, of any STATE non-compliant findings. If the CITY does not correct the non-compliant items within the time specified, or if the non-compliant item(s) is an illicit discharge or if the noted item is a repeat violation, then the STATE will notify the STATE Department of Health ("STATE DOH"). The CITY agrees that any fines levied by the STATE DOH upon the STATE as a result of the CITY's Contractor's work, shall be tendered back to the CITY, regardless if an inspection was undertaken by the STATE. The STATE shall have the authority to issue stop work directives to the CITY's Contractors if the STATE deems the construction site to pose an immediate and significant threat to water quality, human or environmental health, and such occurrence shall be referred to the STATE DOH.

22. End of the ASP. Prior to the expiration of the life of the PROJECT or sixty-five (65) years plus an additional period of time to be negotiated between the Parties, whichever occurs first, the Parties agree to negotiate a new ASP to allow the continued operation and maintenance of the PROJECT on the Airport Premises.

23. Removal of the PROJECT. Upon the expiration of the life of the PROJECT or sixty-five (65) years, as may be extended by negotiation, whichever occurs first, and if a new ASP has not been agreed to by the Parties as provided under Paragraph 22 (End of the ASP), or upon abandonment as provided in Paragraph 18 (Abandonment), the CITY shall:

- a. Remove and Restore. At the CITY's sole cost and expense, remove any and all portions of the PROJECT installed or constructed on, within, under, over, or across the Airport Premises and any improvements, equipment, facilities, components, and appurtenances relating thereto and restore the Airport Premises to the reasonable satisfaction of the STATE, to a condition equal to the then-current standards or as it existed prior to the commencement of this ASP. If the CITY fails to restore the Airport Premises to a condition reasonably satisfactory to the STATE, the STATE shall have the right to charge the CITY, and the CITY shall be solely responsible for, any and all reasonable costs and expenses incurred by the STATE in completing and accomplishing such restoration, including, but not limited to, any costs the STATE incurs in removing and disposing of the CITY's property.
- b. Right to Purchase. City shall offer the STATE the first option to acquire any land and property that the City and/or its successors acquired in

connection with the PROJECT, provided such property is adjacent to or near STATE property (such as areas identified on the Airport Layout Plan as clearance zone, or areas that should be under the STATE's control to prevent future incompatible land uses). At no cost to the STATE, the STATE shall have up to six (6) years to assess and secure funding to acquire any such properties. Conveyance of the properties to the STATE shall be in compliance with, or permitted by, applicable Federal, State, and CITY guidelines, regulations, or laws.

24. Compliance with Laws. The CITY, at all times during the term of this ASP, shall comply with and observe all of the requirements of all Federal, including but not limited to the FAA, STATE, and CITY laws, statutes, ordinances, rules, and regulations now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within AIRPORT LANDS.

25. Binding Effect. All provisions contained in this ASP shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

26. Singular, Plural, Gender. All words used herein in the singular number shall extend to and include the plural. All words used in a gender shall extend to and include all genders.

27. Severability. The portions of this ASP shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this ASP shall not affect any other provision or provisions of this ASP, and each term or provision of this ASP shall be construed to be valid and enforceable to the full extent permitted by law.

28. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this ASP to which they may pertain.

29. Drafting of ASP. The Parties to this ASP expressly acknowledge that this ASP is the product of mutual negotiations; that each has had ample opportunity to read the ASP; that each has had any questions or concerns completely explained by independent counsel and is satisfied that this ASP accurately conveys the meanings and intents it chooses to be bound by; and, it is expressly agreed that neither party shall be construed to be the primary drafter thereof.

30. Unique Terms of the ASP. The Parties to this ASP agree that when the terms contained in the Master Agreement do not adequately address the specific use and occupancy of AIRPORT LANDS impacted by the PROJECT and in the event of any conflict between the terms of the Master Agreement and this ASP, the terms of this ASP shall prevail;

31. Survivability. All obligations arising prior to termination of this ASP, all obligations of the parties to be completed following termination of the ASP, and all paragraphs

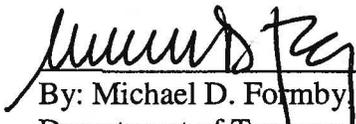
of this ASP allocating responsibility or liability between the parties shall survive the termination of this ASP.

32. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this ASP shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. The STATE reserves the right, from time to time, to update the ASP to reflect its then-standard policies and procedures applicable to airport tenants and users of AIRPORT LANDS when it relates to the safety, security and operations of the airport and airport system. Such updated ASP is at the sole discretion of the STATE and does not require the other party to sign such ASP. However, when the ASP needs to be updated and such change(s) affects the negotiable term(s) of the ASP, then such ASP cannot be modified except by an instrument, in writing, signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed the day and year first above written:

CITY AND COUNTY OF
HONOLULU

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

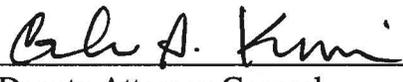

By: Michael D. Formby, Director
Department of Transportation Services
City and County of Honolulu


By: Glenn M. Okimoto, Ph.D.
Director, Department of Transportation
State of Hawaii

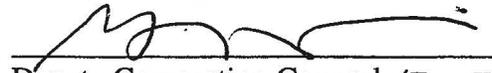
APPROVED AS TO CONTENT:

APPROVED AS TO FORM:


By: Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services


Deputy Attorney General

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel (For HART)
GARY Y. TAKEDCHI
APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel (For City)
KRISHNA F. JAYARAM

